

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

DYSON TECHNOLOGY LIMITED)	
and DYSON, INC.,)	
Plaintiffs,)	
v.)	Civil Action No. 05-434 GMS
)	
MAYTAG CORPORATION,)	REDACTED FOR PUBLIC FILING
Defendant.)	
)	

DEFENDANT HOOVER, INC.'S MEMORANDUM OF LAW
IN OPPOSITION TO PLAINTIFF'S MOTION *IN LIMINE* NO. 3
TO EXCLUDE TESTIMONY OF MAYTAG EXPERT YORAM (JERRY) WIND
REGARDING CONSUMER SURVEY/MARKETING RESEARCH

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Defendant Counterclaim Plaintiff Hoover, Inc. ("Hoover")¹ respectfully submits this answering brief in opposition to the motion *in limine* by Plaintiff Counterclaim Defendants Dyson Technology Limited and Dyson, Inc. (collectively "Dyson") to exclude the testimony of Hoover's expert Yoram (Jerry) Wind regarding consumer survey/marketing research.

I. FACTUAL BACKGROUND

Yoram Wind, Ph.D., is one of the foremost experts on marketing research, consumer perceptions, and consumer surveys. (Wind Rep. App. A, Rollins Aff. Ex. A.)

II. ARGUMENT

The Third Circuit “do[es] not require an expert to base his or her opinions on independent data collection or field research; rather the question is ‘whether an expert’s data is of a type reasonably relied on by experts in the field . . . and whether there are good grounds to rely on this data to draw the conclusion reached by the expert.’” *Jaasma v. Shell Oil Co.*, 412 F.3d 501, 514 (3d Cir. 2005) (finding Plaintiff’s expert satisfied the *Daubert* standard in relying upon Defendant’s own environmental

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surveys and reports to render conclusions about the uncertainty surrounding the environmental status of Defendants' property); *In re TMI Litig.*, 193 F.3d 613, 697 (3d Cir. 1999).

“In a Lanham Act false advertising case, it is crucial that the survey evidence presented to the trier of fact most closely replicates consumers’ ‘real world’ perceptions.” *Church & Dwight Co., Inc. v. S.C. Johnson & Son, Inc.*, 873 F. Supp. 893, 910 (D.N.J. 1994). Accordingly, “the type of consumer survey questions companies employ when making multi-million dollar consumer marketing decisions are the most accurate and reliable measure of actual consumer perception.” *Id.*

WHEREFORE, for the foregoing reasons, Defendant Counterclaim Plaintiff Hoover respectfully requests that this Court deny Dyson's Motion *in Limine* No. 3.

Dated: April 23, 2007

Respectfully submitted,

HOOVER, INC.

/s/ Francis DiGiovanni

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CERTIFICATE OF SERVICE

I, Francis DiGiovanni, hereby certify that on April 23, 2007, copies of the foregoing document were served on the following counsel of record in the manner indicated:

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